IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No. 7179 of 2004

For Approval and Signature:

HONOURABLE MR.JUSTICE AKIL KURESHI

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1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to the civil judge ?

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MANSINH RANJITSINH RATHOD ASSISTANT CONDUCTOR BADGE NO. - Petitioner(s)

Versus

GUJARAT STATE ROAD TRANSPORT CORPORATION, & 1 - Respondent(s)

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Appearance :

MR AM RAVAL for Petitioner(s) : 1,
MR HARDIK C RAWAL for Respondent(s) : 1,
Mr. DA DESAI AGP for Respondent(s) : 2,

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CORAM : HONOURABLE MR.JUSTICE AKIL KURESHI

Date : 15/09/2005

ORAL JUDGMENT

1.In the present petition, the petitioner has prayed for a direction to respondent No.1 Corporation to reinstate the petitioner as per the settlement arrived at between

the parties before the Labour Court in Reference (LCH) No. 77/99 and to pay backwages and other consequential benefits as envisaged in the said settlement.

2.The petitioner was earlier working as a Conductor with respondent No. 1 Corporation. For some alleged misconduct, he was dismissed from service by the Corporation. The petitioner challenged his dismissal before the Labour Court, Himatnagar in Reference (LCH) No. 77/99. During the pendency of the reference proceedings, parties to the dispute arrived at a settlement. The consent terms dated 18.09.2001 were produced before the Labour Court. Salient features of the agreement between the parties were as follows :

1. The workman will be taken in service pursuant to the settlement within a period of one month from the date of publication of the Award in terms of settlement.

2. The workman will not be entitled to any salary for the period between his dismissal till his reinstatement nor will he be given increments for the said period.

3. His service will be treated as continuous. If in the meantime there has been any settlement, it will be given effect to only for the purpose of pay fixation but not for actual wages or increments.

4. If the workman possesses the badge, license and physical fitness, he will be posted in his original capacity as per the administrative convenience.

3.It is the case of the petitioner that the respondent No. 1 Corporation did not act in terms of the settlement and the petitioner was not reinstated.

3.1It is the case of the respondent on the other hand and about which there is no serious dispute that the petitioner was declared as not physically fit to discharge duties as a Conductor. The respondent therefore did not reinstate him in service relying on the terms and conditions of the settlement.

3.2It is also not in dispute that subsequently, the petitioner produced a Certificate from Chief District Medical Officer-Cum-Civil Surgeon of Sir Pratap General Hospital, Himatnagar dated 20.02.2003, in which, it is stated that he is completely and permanently unfit for the post of Conductor but fit for the post of Helper or Class-IV servant.

4.On the above factual background, learned Advocate Shri

Rawal submitted that the respondent acted illegally. It is contended that the petitioner ought to have been reinstated and assigned lighter duty. He submitted that Condition No. 5 of the settlement only envisage that the workman will be given duty of Conductor, if found physically fit, but never provided that his reinstatement would depend on his proving of physical fitness.

4.1Reliance was placed on the decision of the Hon'ble Supreme Court in the case of **Narendrakumar Chandla Vs. State of Hariyana reported in 1994(4) SCC 460** wherein the Hon'ble Supreme Court observed that when an employee is physically incapacitated due to disease and is absorbed in lower post, he is entitled to protection of pay of the original post.

4.2Reliance was placed on the decision of the Hon'ble Supreme Court in the case of **Kunal Singh Vs. Union of India reported in AIR, 2003 SC 1623**, wherein the Hon'ble Supreme Court observed that the protection guaranteed under Section 47 of Persons with Disability(Equal Opportunities, Protection of Rights and Full Participation) Act, 1955 is mandatory.

4.3Reliance was also placed on the decision of the Division Bench of this Court dated 06.12.2000 passed in Letters Patent Appeal No. 511/99, wherein also, the Division Bench of this High Court had upheld protection granted by the learned Single Judge to the employee of the State Road Transport Corporation, who had received disability during service.

4.4On the basis of these averments, it was contended that the petitioner is required to be reinstated with full backwages and other consequential benefits for the intervening period.

5.Learned advocate Shri Rawal appearing for the respondent No. 1 Corporation submitted that the petitioner cannot be reinstated in service. That he had to prove his fitness before re-entering into the Corporation. The petitioner was dismissed from service pursuant to proved charges of misconduct. When the matter was compromised between the parties, it was clearly envisaged that he will be reinstated only if he is found to be physically fit.

6. From the above background, it can be seen that after having dismissed the petitioner from service in a pending reference, the petitioner and the respondent No. 1 Corporation entered into a compromise. The leading features of the terms of compromise have already been noted hereinabove. In the consent terms, it was envisaged that the petitioner will be placed on his original post subject to his having the badge, license and physical fitness for the same. Thus, though the eventuality of the petitioner getting back to his post as a Conductor depended on his proving his physical fitness for the job in question, his reinstatement was not connected to the same. In that view of the matter, I agree with the submissions of the learned Advocate for the petitioner that the respondent No. 1 Corporation ought to have reinstated the petitioner in service and assign some other lighter duty even if it was found that he is not fit to discharge the duties as a Conductor, especially when the petitioner was declared fit to work as a Peon or on any other Class-IV post. Even otherwise, provisions have been made in the Persons with Disability(Equal Opportunities, Protection of Rights and Full Participation) Act, 1955, to protect the pay-scale of

the employees developing disability during the course of employment. Learned advocate for the petitioner also pointed out that the respondent No. 1 Corporation also has certain similar provisions by virtue of settlement between employer and the Union. In that view of the matter, the petitioner ought to have been reinstated in service and considered for lighter duty, even if his physical fitness did not permit him to discharge the duty as a Conductor.

6.1Request of the petitioner's learned Advocate for being granted full backwages for the intervening period however cannot be accepted. In the settlement arrived at between the parties, one of the conditions as noted earlier was that, he will be posted on his original post subject to his proving his fitness. Though I have interpreted this earlier as to mean that the reinstatement of the petitioner was not dependent on his proving his fitness to discharge the duty of the Conductor, the said condition was possible of two interpretations. If the Corporation felt that the reinstatement was not required to be granted, unless and until he is found to be physically fit, I do not think it was unreasonable stand on the part of the

respondent Corporation. The said condition was open to more than one interpretations. In that view of the matter, when the petitioner has not actively discharged the duties for the intervening period, I see no justification for granting him wages for the same. One may not loose sight of the fact that the petitioner was dismissed from service and it was in the industrial dispute raised by the petitioner that the matter came to be compromised leading to the settlement in question. In that view of the matter, while granting reinstatement to the petitioner and permitting the respondent No. 1 Corporation to engage him in any lighter duty, it is provided that :

1. He will be entitled to continuity of service and notional increments after the period when the settlement became enforceable.

2. He will not be entitled to salary for the said period.

3. Even if he is engaged in any lower post, his pay in his original post shall be protected.

4. All terms and conditions of the settlement remain unchanged.

5.These directions will be complied within a period of 1 month from the date of the receipt of the copy of Order.

7.With these directions, the petition is allowed in part. Rule made absolute to the above extent. No orders as to costs.

(Akil Kureshi, J.)

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